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Financing of the International Residual Mechanism for Criminal Tribunals

Construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered an advance copy of the report of the Secretary-General on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch (A/72/734). During its consideration of the report, the Advisory Committee met with representatives of the Secretary-General, concluding with written responses received on 5 March 2018.

2. The report, which is the seventh progress report of the Secretary-General on the construction of the new facility for the Arusha branch of the International Residual Mechanism, provides an update on the project since the issuance of the previous report of the Secretary-General (A/71/753). In this regard, the Advisory Committee recalls that in its resolution 71/282, the General Assembly requested the Secretary-General to submit to the Assembly at its seventy-second session, a final progress report on the construction of the facility. The Secretary-General indicates that the current report is submitted as a progress report because the project is still in the defects liability phase and not all tasks have been completed, and also indicates that a final progress report will be submitted to the Assembly at its seventy-third session (see para. 22 below).

II. Progress update, project schedule and project management

Project progress

3. The report of the Secretary-General indicates that substantial completion of the project was achieved on 1 December 2016, marking the conclusion of the construction phase and the beginning of the post-occupancy/defects liability period during which

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the contractor is required to complete any minor outstanding works or remedy any defective works, and that a punch list of the defective items and minor outstanding works was generated as part of the substantial completion inspection (see A/72/734, para. 7). The report also indicates that the new facility has been occupied since 5 December 2016 with full use being made of the office building, and that the courtroom building is also fully functional and is ready to host trial activity (ibid., para. 16).

4. The report of the Secretary-General provides information on progress made during the reporting period in addressing the punch-list items (see A/72/734, paras. 17–24) and identifying and addressing design defects (ibid., paras. 25–29) and on lessons learned (ibid., para. 30).

5. With regard to punch-list rectifications, the report of the Secretary-General indicates that by November 2017, the contractor had completed only 20 per cent of the 880 items recorded for rectification (see A/72/734, para. 19). The report also indicates that in order to allow work on the punch list to continue, and in coordination with the Office of Central Support Services and the Office of Legal Affairs, the Mechanism released to the contractor the pending payment of $493,075 which had been withheld in light of potential delay damages, while informing the contractor that negotiations on the recovery of delay damages would continue (ibid., para. 20; see also paras. 16 and 21 below). Upon request for an update on the status of the punch-list items, the Advisory Committee was informed that, based on an initial assessment conducted in-house, it was estimated that some 570 items, or 65 per cent of the total number of 880 punch-list items, have now been rectified. However, the official assessment of progress will be made on the basis of the formal inspection conducted by the architect, scheduled for the end of March 2018. The report of the Secretary-General indicates that the contractor has been informed that the defects liability period has been extended to 30 April 2018, but that the United Nations has not excused any delay in the timely completion of the works and reserves its contractual rights and remedies (ibid., para. 22).

6. With regard to design defects, upon enquiry, the Advisory Committee was informed that the design-related deficiencies identified by the project team related to the installed heating, ventilation and air-conditioning system, which did not meet the required air quality, temperature control and relative humidity standards (see A/72/734, paras. 25–26), were located in the cold vault and in the main repository of the archives building. The rectification will require a redesign of the heating, ventilation and air-conditioning system involving installation of new air filters, humidifiers and an air-handling unit to be integrated within the existing system. However, the majority of heating, ventilation and air-conditioning components will continue to be used. The Committee was also informed that the architect has made a commitment to redesign the heating, ventilation and air-conditioning system at no cost to the Mechanism. Furthermore, the Mechanism is engaged in consultations with the Office of Legal Affairs to assess any potential remedies related to loss stemming from faulty design of the system (ibid., para. 28). In the meantime, it is expected that contingency provision will be utilized to rectify the defects in order to ensure prompt completion. The report of the Secretary-General indicates that it is expected that any additional costs stemming from the remediation of defective design work in the heating, ventilation and air-conditioning system or other systems would be recouped from the architect and the contractor (ibid., para. 38).

7. The Advisory Committee recalls that in the fifth progress report of the Secretary-General, it was indicated that the project team had approved the contractor's proposal for an alternative heating, ventilation and air-conditioning system which was not included in the specifications of the contract (see A/70/698, para. 38). Upon enquiry as to whether that proposal had in fact been implemented,

the Committee was informed that, in an effort to seek efficiency and apply value engineering to the project, the Mechanism had approved installation of the proposed alternative heating, ventilation and air-conditioning system which was purported to have resulted in 33 per cent shorter procurement lead times, improved energy efficiency, and better after-sales service. The installation had been effected through a variation order at no additional cost to the project.

8. **The Advisory Committee trusts that the Secretary-General will provide in his final progress report comprehensive information on the defects in the design of the heating, ventilation and air-conditioning system, as well as details on the solutions implemented to properly commission the system. The Committee expects that that proper follow-up will be undertaken to assess contractual remedies and that all additional costs arising from the remediation of the system will be fully recovered by the United Nations. The Committee further expects that details on the contractual remedies exercised, expenditures incurred and costs recouped from the architect and contractor will be provided in the final progress report (see paras. 21–22 below).**

9. **The Advisory Committee emphasizes the need to fully analyse and document lessons learned by the Mechanism in this regard for the benefit of other ongoing and future capital projects.**

10. In paragraph 29 of report A/72/734, the Secretary-General refers to other design-related deficiencies requiring remediation, including pressure controls of the firefighting system and the need to reroute the chilled-water system away from the data centre. Upon enquiry, the Advisory Committee was informed that these deficiencies related to installations provided by the contractor based upon drawings and specifications developed by the architect. The Mechanism had prioritized rectification of those deficiencies that would compromise the safety of personnel, or the functionality of sensitive installations such as security and information technology, by utilizing the contingency provision. The Committee was also informed that the Mechanism was assessing, in ongoing consultations with the Office of Legal Affairs, its potential contractual remedies against the architect, particularly regarding design defects. **The Committee expects the Secretary-General to provide, in his final progress report, further details on the other design defects and completed remediation works, the related delays and financial implications, as well as on the contractual remedies exercised, the expenditures incurred under the contingency provision and the costs recouped from the architect and/or the contractor (see paras. 21–22 below).**

Project schedule

11. The report of the Secretary-General indicates that it is currently estimated that the rectification of the punch-list items will be completed by the end of April 2018, and that the rectification of the heating, ventilation and air-conditioning system will be completed by the third quarter of 2018. The revised project schedule is presented in the annex to the report of the Secretary-General. **The Advisory Committee expects the Secretariat to closely monitor progress and ensure that the remaining rectifications are fully completed without further delay within the revised time frames and approved resources (see A/72/734, paras. 33–34 and 39).**

Project management

12. In paragraph 8 of report A/72/734, the Secretary-General provides information on the project team responsible for the overall coordination and oversight of the project. As indicated, since assuming office on 1 January 2017, the Assistant Secretary-General and Registrar of the Mechanism serves as the project owner,

assisted by the Head of Registry, Arusha branch, who serves as coordinator for the project. The report indicates that on 19 June 2017, the project owner recruited a dedicated project manager to replace the outgoing project manager and to see the project through the defects liability period to final completion. Since the departure of the previous project manager on 31 December 2016 (see A/71/753, para. 21), the responsibilities of the project manager had been assumed by the Head of the General Services Unit, who is responsible for the Mechanism's facility management in Arusha. Information on best practices identified by the project team for the project close-out phase is provided in the report of the Secretary-General (A/72/734, para. 30). Upon request for further details on lessons learned with respect to project management, the Advisory Committee was informed that the absence of a dedicated project manager during the first six months of 2017 was one of the factors contributing to the delays in the project.

13. **The Advisory Committee notes with concern that the lack of continuity in the management of the project resulted in delays and cost escalation, as well as a delay in the issuance of the final progress report for the project (see para. 2 above). The Committee emphasizes the importance of proactive and sustained project ownership, management and oversight through all the project phases and at all levels, including at Headquarters and at the local level. It stresses that, in the case of ordinary staffing changes, the Secretariat should have in place appropriate procedures to enable continuity in the management of key projects in a manner that ensures a smooth transition without any adverse impact on the management of the project or on the use of approved resources.**

14. **The Advisory Committee trusts that the Secretary-General will fully analyse the deficiencies in the design and execution phases as well as the weaknesses in the oversight and management of the project and in the support provided by the Office of Central Support Services at Headquarters, taking into account the outcome of internal consultations and audits (see also para. 23 below), and document the lessons learned by the Mechanism for application to other ongoing and future construction projects.**

III. Project expenditures and contingency provisions

15. As noted in previous reports of the Secretary-General, the total resources approved by the General Assembly for the project amounted to $8,787,733, comprising the total estimated project cost of $7,737,362 and $1,050,371 for contingencies. Table 1 of the report of the Secretary-General shows that the total estimated expenditures for the project amount to $8,370,752.

16. As indicated in paragraph 20 of the report of the Secretary-General (see also para. 5 above), a total amount of $493,075 that had been withheld in light of potential delay damages was released for payment to the contractor in 2017. Upon enquiry, the Advisory Committee was informed that the sum of $81,181 shown under the construction cost component in table 1 of the report of the Secretary-General had been obligated by the Mechanism in 2017 for disbursement in 2018 as part of the release of retention funds in 2017. The table also shows an additional amount of $551,481 for projected expenditure from January 2018 until completion of the project. The Committee was informed that the above amounts that are yet to be paid allowed the Mechanism to retain its leverage vis-à-vis the contractor. The Committee was further informed that cumulative amounts of $6,016,055 and $872,201 had been disbursed to the contractor and architect, respectively, up to 31 December 2017.

17. With regard to the use of the contingency provisions, table 1 of the report of the Secretary-General shows that the total deficit projected to be covered by the

contingency provisions amounts to $633,390. The previous report of the Secretary-General (A/71/753, table 2) indicated that total expenditures projected against the contingency provisions amounted to $594,557.

18. The Advisory Committee found the information on the breakdown of contingency provisions and expenditure against the contingency in table 2 of the report of the Secretary-General (A/72/734) to be confusing. For instance, it is not clear how the negative amount of $12,971 under architect fees for 2018 was arrived at. Upon enquiry, the Advisory Committee was informed that the negative amount of $12,971 under 2018 reflects an adjustment for the difference between the actual and the projected disbursements for architect fees against the contingency provision. Upon request, the Committee was also provided with the following table which provides a breakdown of the projections and actual expenditures against contingency by year and cost component from 2015 to 2017.

Projections and actual expenditures against contingency from 2015 to 2017

(United States dollars)

	2015		*2016*		*2017*		*Cumulative total*	
Cost component	*Projections*	*Actuals*	*Projections*	*Actuals*	*Projections*	*Actuals*	*Projections*	*Actuals*
Construction	–	–	251 424	251 424	–	–	251 424	251 424
Architect fees	64 272	64 272	85 711	85 711	189 200	176 229[a]	339 183	326 212
Travel	–	–	–	–	3 950	3 950	3 950	3 950
Total	**64 272**	**64 272**	**337 135**	**337 135**	**193 150**	**180 179**	**594 557**	**581 586**

[a] Including an adjustment of $12,971 to reflect actual disbursements against contingency.

19. Based on the explanations provided, the Advisory Committee notes that some of the information presented in table 2 of the report of the Secretary-General reflects data on projections rather than actual expenditures against contingency. **The Committee is of the view that the presentation of the information on the use of contingency provisions should be improved, in particular to provide a clear distinction between the projected and actual amounts charged to the contingency provisions by year, as well as any relevant explanations and footnotes. The Committee expects that clear information on the use of the contingency provisions will be provided in the final progress report.**

20. The Advisory Committee requested further clarification on the additional requirements of $20,398 for travel projected to be charged against the contingency provision in 2018, but was not provided with sufficient justification. The Committee trusts that the Secretary-General will provide the clarification requested to the General Assembly at the time of its consideration of this item. Upon enquiry, the Committee was further informed that the project did not foresee any other use of contingency funds related to the construction, architectural fees, project supervision fees or travel in the reporting period. **The Committee trusts that the use of the contingency provision is in full compliance with the guidance provided by the Assembly on this matter in its resolution 71/272. In this connection, the Committee reiterates that the Assembly has stated that all remaining unused contingency funds shall be returned to Member States at the conclusion of the project (see Assembly resolution 71/272).**

21. With regard to the total amounts expected to be recovered at the end of the project (see also paras. 6–10 above), the Advisory Committee was informed that they comprised (a) delay damages under the contract with the contractor, which, according to the terms of the contract, could reach a maximum amount of $661,400; and

(b) costs related to the retrofit of the heating, ventilation and air-conditioning system and design deficiencies attributable to the architect, which could be known only after the receipt of the design of the system expected by the end of February 2018. The Committee was informed that discussions with the Office of Legal Affairs and the Procurement Division on the recovery of the above-mentioned additional costs were ongoing, and that the approach adopted by the United Nations must take into account that the parties from whom the amounts will be recovered are still performing work under the contract, that such works must proceed as expeditiously as possible, and that prompt completion of the remaining tasks should not be jeopardized. **The Committee stresses that the United Nations should not bear the responsibility for paying any direct or indirect costs resulting from design defects or delays, and expects that the full amount of the related additional costs will be recovered (see also A/71/812, para. 14).**

22. **The Advisory Committee recommends that the General Assembly request the Secretary-General to submit a final progress report for consideration at its seventy-third session, which would include a finalized, updated project budget which includes details on the indirect and direct costs arising from damages and delays, as well as the final amount charged against the project contingency provisions. The final progress report should also document the lessons learned, drawing from the experience acquired by the Mechanism in the implementation of the project.**

IV. Other matters

Oversight

23. From paragraph 15 of the report of the Secretary-General, the Advisory Committee notes that a third and final audit of the project, which covers the immediate post-construction phase, is under way. **The Committee expects that the outcome of the audit will provide greater clarity on the causes of the delays suffered by the project during the reporting period, as well as on accountability and responsibility for those delays, and any action taken in this regard.** The Committee will revert to this matter in the context of its next report.

V. Conclusion and recommendation

24. **The Advisory Committee recommends that, subject to its recommendations and observations made above, the General Assembly take note of the report of the Secretary-General.**